

3737

10121/00901



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Roy SULLIVAN
 Serial No. : 09/603,886
 Filed : June 26, 2000
 For : APPARATUS AND METHOD FOR PERFORMING A
 TISSUE RESECTION PROCEDURE
 Group Art Unit : 3737
 Examiner : Runa S. Qaderi

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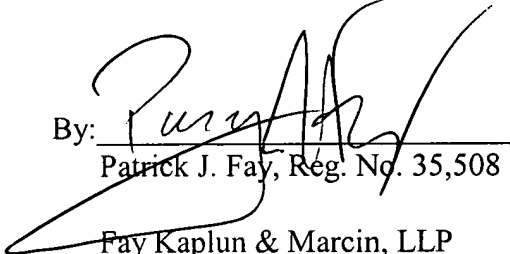
SIR:

Transmitted herewith for filing in the above-identified application is a Notice of Appeal and Petition for Revival of Unintentionally Abandoned Application.

The Commissioner is hereby authorized to charge the Petition Fee of \$1,330.00 and the \$330.00 fee for the Notice of Appeal and any additional fees required to Deposit Account No. 50-1492. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

Dated: December 29, 2003

By: 
Patrick J. Fay, Reg. No. 35,508

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,886	06/26/2000	Roy Sullivan	10546/56701	2146

7590 12/10/2003
FAY KAPLUN & MARCIN, LLP
150 BROADWAY, STE 702
NEW YORK, NY 10038



EXAMINER

QADERI, RUNA S

ART UNIT PAPER NUMBER

3737

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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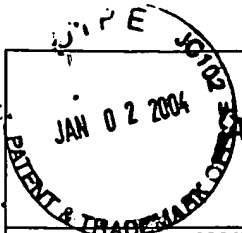
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Advisory Action

Application No. 09/603,886	Applicant(s) SULLIVAN, ROY
Examiner Runa S. Qaderi	Art Unit 3737

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

- 3. Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
- 4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
- 6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____
 Claim(s) objected to: _____
 Claim(s) rejected: 33-42.
 Claim(s) withdrawn from consideration: _____

- 8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.
- 9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 10. Other: See Continuation Sheet

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DENNIS W. RUHL
 SUPERVISORY PATENT EXAMINER

Continuation of 3. Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, 1st paragraph rejections to claims 33-42 have been overcome, but specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Specification must be corrected to include the terms "flexible body" and "a naturally occurring body orifice".

Continuation of 10. Other: 35 U.S.C. 103 (a) rejections to claims 33-42 have not been overcome and therefore remain. Examiner has satisfied the prima facie case of obviousness according to MPEP 2142-2143.02. Evidence for combining the prior art is taught within the prior art as noted in Office Action mailed 6/4/03. Examiner respectfully disagrees with the hindsight allegations..

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